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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,587	10/30/2003	John Wirth JR.	3584-33	7205
23117 7590 09/08/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
NGUYEN, PHONG H				
ART UNIT		PAPER NUMBER		
3724				
MAIL DATE		DELIVERY MODE		
09/08/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/696,587

Applicant(s)

WIRTH ET AL.

Examiner

PHONG H. NGUYEN

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-14 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-8, 11-14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 9, 10 and 19-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

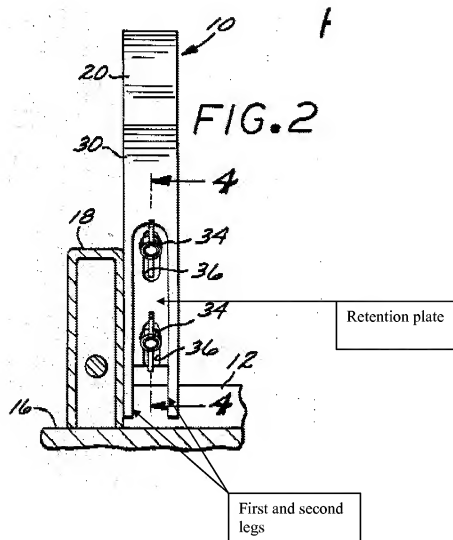
2. Claims 7, 8, 11, 13, 14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Jennings (4,370,909).

Regarding claim 7, Jennings teaches a push block device comprising:

a main body having a first flat working surface (26, 28) for engaging a top surface of a workpiece;

a handle portion;

a heel component 30 extending from the main body, the heel component 30 having a first, operative position, wherein the heel component 30 projects vertically below the first flat working surface (Fig. 1), the heel component having a second, stored position (the upper and lower wing nuts 34 are removed from their threaded shafts, the heel component could be removed and repositioned 180 degrees with respect to the body portion 20 such that the lower portion 32 of the heel component faced straight up. One could then reinstall and tighten the upper wing nut 34.), the heel component 30 defining a second working surface 32 and first and second legs.



Regarding claim 8, the first and second legs being secured to the main body is best seen in Fig. 1.

Regarding claim 11, Jennings teaches a push block device comprising a main body, a handle component, a heel component as explained in claim 7 above, and the heel component further having a retention plate as shown in Fig. 2 above.

Regarding claims 13 and 14, Jennings teaches a method for advancing a workpiece with a push block, wherein the push block comprises a main body, a handle component and a heel component as explained in claim 7 above.

Regarding claims 17 and 18, Jennings teaches a push block device comprising a main body, a handle component, a heel component as explained in claim 7 above, and the handle having a grip portion and a leg portion (Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jennings (4,370,909) in view of Wang (2002/0178888).

Regarding claims 5 and 12, Jennings teaches a push block device comprising:

a main body having a first flat working surface (26, 28) for engaging a top surface of a workpiece;

a handle portion;

a heel component 30 extending from the main body, the heel component 30 having a first, operative position, wherein the heel component 30 projects vertically below the first flat working surface (Fig. 1), the heel component having a second, stored position (the upper and lower wing nuts 34 are removed from their threaded shafts, the

heel component could be removed and repositioned 180 degrees with respect to the body portion 20 such that the lower portion 32 of the heel component faced straight up. One could then reinstall and tighten the upper wing nut 34.), the heel component 30 defining a second working surface 32 and first and second legs.

Jennings does not teach providing an anti slippery pad to one of the first and second working surfaces.

Wang teaches a push block device 50 for use with a woodworking machine wherein a flat working surface defined by the bottom of legs 56, 58 is covered with slip resistant pads 76. See Fig. 2 and column 6, lines 38-62.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have secured a slip resistant pad to the flat working surface 26, 28 of Jennings, as taught by Wang, to ensure that the working surface of the push block does not slip with respect to the work piece when advancing the work piece toward the woodworking machine.

Regarding claim 6, the expression "is over molded" is treated as a product by process limitation; that is, that pad is made by a molding process. As set forth in MEPE 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to the Applicant to show an unobvious difference. See MPEP 2113.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jennings (4,370,909).

Jennings teaches a push block device comprising a main body, a handle component, a heel component as explained in claim 7 above.

Jennings does not teach the main body and the handle component being made from a plastic material.

To select a well known material such as plastic for the main body and the handle component would have been obvious to one having ordinary skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

6. Claims 9, 10 and 19-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed on 06/25/2010 have been fully considered but they are not persuasive.

Regarding the Applicant's argument with respect to Jennings in claim 7, when the heel 30 it rotated 180 degrees about the upper bolt, it does not extend below the plane of the bottom; and the bottom section containing surface 32 defines a head portion. Therefore, Jennings meets all the limitations in claim 7.

Regarding the Applicant's argument with respect to Jennings in claim 11, the Applicant is noted that the term “; and” bridges the paragraphs describing the handle component and the heel component. It signals that the last component of the push block is the heel component. Therefore, the retention plate is not a part of the push block. Furthermore, because the limitation of the retention plate appears right after the comma sign of the heel component paragraph (“the workpiece, further comprising a retention plate”), the retention plate is considered to be a part of the heel. The Applicant may clearly state the retention plate being a part of the push block but not the heel by replace the comma sign after the term “workpiece” in the heel component paragraph with “; and”

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phong H Nguyen/
Examiner, Art Unit 3724
September 7, 2010